

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DESHAUN CARTER, SHONITA FORD,)	
TARRENCE GORDON, DONALD)	
HAWTHORNE, KERRY HAWTHORNE, DANA)	
HOOPER, LARRY OSBORNE, BARRY)	
REYNOLDS,)	
		CIVIL ACTION NUMBER: 2:07-
PLAINTIFFS,)	CV-988-WKW
)
v.)	
)
DAEHAN SOLUTION ALABAMA, LLC,)	
)
DEFENDANT.)	

**OBJECTION TO MAGISTRATE JUDGE'S RECOMMENDATION
ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF FORD**

The Defendant accepts the Magistrate Judge's determination that it proceeded incorrectly regarding Defendant Ford's communication to it of her desire to be dismissed from this action and accepts his recommendation [Doc. #40] that the motion [Doc. #38] be denied. Defendant's counsel accepts the Magistrate Judge's accusation of inartful drafting. However, Defendant strongly objects to the statement in the recommendation that its counsel engaged in conduct that was, "ethically... inappropriate [Doc. #40 @ p.2, l.12]." Before adopting this portion of the recommendation, Defendant's counsel, the undersigned, asks to be heard by the District Court.

The objectionable part of the recommendation appears to stem from the Magistrate Judge's incorrect conclusion that Defendant's counsel was attempting to represent Plaintiff Ford in filing the motion. There is absolutely nothing in the motion that justifies that conclusion. The abbreviated motion simply states the facts of the rather novel situation in which the Defendant found itself. An unrepresented Plaintiff asked it and its counsel to be "released" from the lawsuit.

Defendant's counsel reported those facts to the Court via a motion to dismiss which is clearly designated as filed by: "Attorneys for Defendant Daehan Solution of Alabama, LLC." Nowhere does Defendant's counsel make any suggestion that he represents Ms. Ford. In fact, Defendant's counsel thoroughly described the events that led to his speaking with this individual defendant and his caution in making sure he was free to do so, which he considered to be the ethically-sensitive part of the matter. The Magistrate Judge's recommendation criticizes the failure of Defendant's counsel to represent that he had authority to make Ms. Ford's wishes known to the Court. Defendant's counsel felt that was implicit in his report of Ms. Ford's request, but to the degree it was not, he makes that representation, now. Ms. Ford said she wished to be dismissed (as previously averred). Defendant's counsel said that he would file something with the Court to try to get that done. He told her that she would likely have to appear before the Court so that it could be certain that this was her true wish, and she thanked him. Defendant's counsel has not had this situation arise before and selected the motion as a simple mechanism to get the issue before the Court. Of course, Ms. Ford was served with a copy of Defendant's motion as insurance that her wishes were being correctly stated by Defendant's counsel.

If somewhat unorthodox, a representation from an officer of the Court contained in a motion, the ultimate purpose of which was dismissal, seemed a much more expeditious procedure than filing a motion for summary judgment or trying to create some failure-to-prosecute on which to base a motion to dismiss. Defendant Ford would not likely understand either of those approaches and both would involve more legal expense and a waste of the Court's time.

Defendant's counsel has practiced law for over thirty years in the Middle District of Alabama. Never in those years has any court, or even any opposing counsel, accused him of

unethical conduct. The Magistrate Judge's accusation is hurtful, unsupported and should not be adopted.

/s/ Bruce J. Downey III

Bruce J. Downey III (DOW006)
Christopher W. Weller (WEL020)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document has been electronically filed using the CM/ECF system and by U.S. Mail to Plaintiffs Shonita Ford and Deshaun Carter on this the 31ST day of July, 2008 as follows:

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s/Bruce J. Downey III
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